Supreme Court, U. S.
FILED
DEC 11 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-328

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH V. ORLEANS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED
AUGUST 30, 1975
CERTIORARI GRANTED OCTOBER 20, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-328

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH V. ORLEANS, ET AL.

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398-641—75

United States District Court, Northern District of Ohio, Eastern Division

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Civil Action No. C 72-260-Y

JOHN V. ORLEANS, ET AL.

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

Date	Proceedings
1972	
Mar. 17	Complaint filed. Summons issued. Copies to the U.S. Marshal.
July 21	Interrogatories of the deft. filed.
July 25	Answer filed. Mld. 7-21-72.
Oct. 18	Answers of the Plaintiff to Defendants' Interrogatories filed.
Oct. 18	Interrogatories of the Plaintiff directed to the Defendant filed.
Nov. 28	Deposition of Robert Howard Walker filed.
Dec. 18	Motion of the Deft. United States of America for Summary Judgment filed. Memorandum, Affidavit & Exhibits in support attached filed.
1973	
Jan. 17	Depo. of Ellen Stanton for pltf. filed.
Jan. 17	Depo. of Dr. Edw. Bauman for pltf. filed.
Jan. 17	Dept. of Leaster Peterman for pltf. filed.
Feb. 23	Deposition of Wendell Verduin taken 1-31-73 at 10:30 A.M. filed. Deposition of the Plaintiff—Deposition Exhibits under separate cover.
1973	
June 28	Memorandum of the Plaintiffs in opposition to Defendant's motion for Summary Judgment with Affidavit and exihibts attached filed.
Sept. 13	Order that the Court finds that Summary Judgment must be granted in favor of the Defendant, United States of America filed. Contie, J.

Date	Proceedings
1973	
Sept. 20	Motion of the Plaintiffs for Re-Hearing and Oral Argument with Brief.
Nov. 1	Minutes of Trial Proceedings filed. Contie, J. Thompson, R. Oral hearing on motion for reconsideration begun and concluded Heard & Submitted.
1974	
Jan. 9	Memorandum Opinion and Order filed. Contie, J.
March 6	Notice of Appeal filed.
April 8	Certified Original Pleadings mailed to the Clerk for the U.S.C.A. 6th Circuit.
May 3	Certified Record received in U.S.C.A. and filed. 5-1-74 (74-1496)

United States Court of Appeals for the Sixth Circuit

No. 74-1496

JOSEPH V. ORLEANS, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

RELEVANT DOCKET ENTRIES

Date	Proceedings
1974	
May 1	*Certified record* (1 vol. pleadings with 4 vols. depositions), filed; and caused docketed.
July 1	Motion: Appellee's brief until 30 days after ruling on motion to affirm. (Denied.)
July 3	Memorandum in opposition to motion to affirm.
1975	
Jan. 13	Judgment of the District Court is reversed and the case is remanded for further proceedings.
Jan. 24	Motion: Appellee's Petition for rehearing to 2/18/75. (Granted/ Lively.)
Feb. 18	Twenty-five copies of petition for rehearing in banc (for USA.)
Apr. 2	Order denying petition for rehearing (Peck, Lively and McAllister, JJ.)
Apr. 7	Motion of Appellee for stay of the mandate.
Apr. 21	Order staying mandate thirty days (Lively, J.)
May 14	Motion of Appellee for further stay of mandate (Granted to 6/6/75, Lively, J.)
June 5	Appellee's motion for additional 28-day stay of mandate to 7/1/75.
June 30	Motion: Additional stay of mandate to 7/31/75.
July 18	Order staying mandate thirty days (Lively, J.).
Aug. 18	Appellee's motion for further stay of mandate pending filing of petition for writ of certiorari.
Sept. 3	Order staying mandate thirty days (Lively, J.).
Sept. 8	Notice of filing petition for certiorari 8/30/75 (Sup. Ct. No. 75-328).
Oct. 30	Certified copy of order of Supreme Court granting certiorari 10/20/75.

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil Action No. C 72-260-Y

JOSEPH V. ORLEANS, BY AND THROUGH HIS FATHER AND NEXT FRIEND, JOSEPH A. ORLEANS, AND JOSEPH A. ORLEANS, 2104 UNION STREET, S.W., WARREN, OHIO, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

Civil Action No. C 72-260-Y

COMPLAINT

FIRST CLAIM FOR RELIEF

1. Now comes the plaintiff, JOSEPH V. ORLEANS, by and through his father and next friend, JOSEPH A. ORLEANS, and for his complaint against the defendant says that his action is brought pursuant to the Federal Tort Claims Act and jurisdiction of this Court arises by reason of the provisions of said Act.

2. The minor plaintiff says that on or about September 3, 1970, he was a participant in an outing sponsored by the Office for Economic Opportunity; that the agents of the United States of America in charge of said outing were negligent in the organization and supervision of said outing and by virtue of said negligence the minor plaintiff was caused to be in an automobile accident as a result of which he suffered severe injuries to his person, including the loss of his right arm, all to his damage in the sum of One Million Dollars ($1,000,000.00).

SECOND CLAIM FOR RELIEF

3. Plaintiff, JOSEPH A. ORLEANS, says that he is the father of the minor plaintiff, JOSEPH V. ORLEANS, and incorporates herein as though fully set forth all of the alle-

gations in the First Claim for Relief and says further that he and his son have exhausted their administrative remedies and that on January 5, 1972, plaintiffs, through their attorneys, were orally authorized by administrative authority to proceed with suit against the defendant and that written confirmation of this authorization was to follow but that up to this time such written authorization has not been received.

4. Plaintiff, JOSEPH A. ORLEANS, says that by reason of the injuries received by his son he has been required to incur expense for medical and hospital treatment and preparation of artificial limbs, the total of said expenses being approximately Twenty-five Hundred Dollars ($2500.00) to date and that said expenses are likely to continue into the future.

5. Plaintiff, JOSEPH A. ORLEANS, says further that he has lost the services of his son and by reason of the loss of services and expenses is damaged in the sum of One Hundred Thousand Dollars ($100,000.00).

Wherefore, plaintiff, JOSEPH V. ORLEANS, prays damage against the defendant in the sum of One Million Dollars ($1,000,000.00) and plaintiff, JOSEPH A. ORLEANS, prays damage against the defendant in the sum of One Hundred Thousand Dollars ($100,000.00), together with the costs of this action.

PFAU, COMSTOCK & SPRINGER,
WILLIAM E. PFAU, Jr.,
Trial Counsel,
Youngstown, Ohio,
Attorneys for Plaintiffs.

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil Action C 72–260–Y

JOSEPH V. ORLEANS, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER

Now comes the defendant, United States of America and denies all allegations in the Complaint for want of knowledge, except Claim 1 herein which it specifically admits to be true.

DEFENSE

1. The United States avers that the Warren Trumbull Council is not an agency or instrumentality of the United States Government.

2. The defendant avers that the Westlawn Neighborhood Opportunity Center is not an instrumentality of the United States Government.

3. The defendant further states that at no time were agents of the United States of America present during, before, or after the described outing.

Wherefore, the defendant, United States of America claims that it is in no way liable, directly, vicariously or otherwise in the alleged occurrence in question, and that for the above reasons the United States prays that this case be dismissed at plaintiff's costs.

FREDERICK M. COLEMAN,
U.S. Attorney.
By JOSEPH T. MCGINNESS,
Asst. United States Attorney.

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil Action No. C 72–260–Y

JOSEPH V. ORLEANS, ET AL., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

MOTION FOR SUMMARY JUDGMENT

Defendant United States of America pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves for summary judgment in the above entitled action on the ground that the Court is without jurisdiction over the United States in that the Westlawn Neighborhood Opportunity Center and the Warren Trumbull Council are not

598-641—75——2

instrumentalities or agencies of the United States within the purview and scope of 28 U.S.C. 2671; and there exists no genuine issue as to any material fact; and that defendant is entitled to judgment as a matter of law.

In support of this motion, defendant attaches hereto and makes part hereof: (1) the Affidavit of the Regional Director of the Office of Economic Opportunity, Chicago Region, (defendant's Exhibit "A"); (2) copies of Community Action Program Grants, from the Office of Economic Opportunity to the Warren Trumbull Council; (3) xerox copy of Judge Frank W. Wilson's opinion in *Sharon Dianne Anderson* v. *David Simpson* v. *Rebecca Gail Roope and Norman H. Roope and Norman H. Roope* v. *David Eugene Simpson, David Ernest Simpson, and the United States of America*, C.A. Nos. 6218 and 6358 (E.D. Tenn. S.D., Oct. 17, 1972), (defendant's Exhibit "C").

Respectfully submitted.

FREDERICK M. COLEMAN,
U.S. Attorney.
By JOSEPH T. MCGINNESS,
Assistant U.S. Attorney.

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil Action C 72-260

JOSEPH V. ORLEANS, ET AL., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

Wendell Verduin, being duly sworn, deposes and says:

1. I am the Regional Director of the Office of Economic Opportunity, Chicago Regional Office (Region V).

2. I am familiar with the complaint filed, in the above-captioned matter and the allegations contained therein.

3. All personnel actions for positions in OEO in the Chicago Regional Office which would encompass the performance of duties in the State of Ohio as well as the other states comprising Region V emanate from the Personnel Branch of the OEO Chicago Regional Office. I have caused a search to be made of OEO personnel records with the following results: The supervisors of Warren Trumbull and Westlawn Center were not agents or employees of the Office of Economic Opportunity on September 3, 1970, nor are they presently, nor were they ever.

4. As the Regional Director of the OEO Chicago Regional Office, I have the responsibility, inter alia, for the making and administering of grants under sections 221 and 222(a)(5), 222(a)(6), 222(a)(7), 222(a)(8), 222(a)(9), of the Economic Opportunity Act of 1964 for the State of Ohio.

5. Under the foregoing statutory authority, OEO has granted funds, starting on June 1, 1970, and thereafter, to Warren Trumbull Council, a non-profit organization and recognized by the Office of Economic Opportunity as an overall community action for the conduct of community action programs.

6. There is no knowledge or information to support a belief that Warren Trumbull or Westlawn employees are federally selected, federally supervised or disciplined, recieve direct federal stipends or pay, or take a federal oath of office. Warren Trumbull and Westlawn make their own decisions as to whom to hire, discipline and discharge. Any attempt by OEO at regulating, hiring and firing practices for grantee personnel is limited to the issuance of standards and OEO does not control employment practices in specific cases. There is no record that OEO was in any way involved in the decision to hire any of the Warren Trumbull or Westlawn employees. Moreover, OEO does not supervise either on a day-to-day basis or otherwise, the activities of grantee employees. Nor are grantee employees subject to OEO supervision or control as to the quantity or quality of the work product they produce.

WENDELL VERDUIN.

Subscribed and sworn to before me this 11th day of December 1972.

CARRIE W. STINSON,
Notary Public.

PAGE OF PAGES

OFFICE OF ECONOMIC OPPORTUNITY - COMMUNITY ACTION PROGRAM

STATEMENT OF CAP GRANT

1. GRANT NO. 4005 - 2D / 2 (PROG. YR. / ACT. NO.)

2. NAME AND ADDRESS OF GRANTEE
Warren-Trumbull Council for Economic Opportunity
203 Pine Street S. E.
Warren, Ohio 44481

2A. ORGANIZATION NO. 51075

3. NAME AND TITLE OF EXECUTIVE DIRECTOR
Lee B. Shelton, Executive Director

4. EFFECTIVE DATE OF GRANT ACTION: June 1, 1970

5. END OF PROGRAM YEAR

6. TERMINATION DATE: September 30, 1971

7. SECTION(S) OF EOA: 221

8. FEDERAL SHARE OF PROGRAM COST FOR THIS PROGRAM YEAR MAY NOT EXCEED ___ 80 %

PROGRAM ACCOUNTS APPROVED THIS GRANT ACTION FOR THIS PROGRAM YEAR — PROGRAM ACCOUNT NAME	FEDERAL SHARE: TOTAL FEDERAL SHARE (TOA)	FEDERAL SHARE: CARRY-OVER FUNDS ASSIGNED *	FEDERAL SHARE: ADDITIONAL FEDERAL FUNDS (NOA)	NON-FEDERAL SHARE	TOTAL PROGRAM: TOTAL COSTS	TOTAL PROGRAM: PERSONNEL COSTS	TOTAL PROGRAM: NON-PERSONNEL COSTS	NO. OF MOS.
20 Special Youth Program	$33,348	-0-	$33,348	$20,106	$ 53,454	$33,366	$20,088	16
A. TOTALS CARRIED FORWARD FROM ATTACHED PAGES (if any)								
B. TOTAL APPROVED THIS GRANT ACTION FOR THIS PROGRAM YEAR	$ 33,348	-0-	$ 33,348	$20,106	$ 53,454	$33,366	$20,088	
C. TOTAL PREVIOUSLY APPROVED FOR THIS PROGRAM YEAR	170,172	1,151	169,021	47,960	218,132	N/A	N/A	
D. TOTAL APPROVED TO DATE FOR THIS PROGRAM YEAR	$203,520	$1,151	$202,369	$68,066	$271,586	N/A	N/A	

9. STATEMENT OF OEO APPROVAL

In accordance with Column (5), Line B, are hereby obligated for the program proposed by the grantee as described above and in the attachments to this statement. Program account budgets are approved only to the extent they conform to applicable general flexibility guidelines or in accordance with [illegible] approval.

APPROVED BY: (Signature and title)

DATE: OCT 23 1970

10. GRANTEE ACCEPTANCE OF GRANT

On behalf of the grantee, I accept the grant and all modifications, general and special conditions, and requirements contained in the attached ___ pages.

ACCEPTED BY: (Signature and title of authorized official)

DATE

10

PAGE OF PAGES

OFFICE OF ECONOMIC OPPORTUNITY - COMMUNITY ACTION PROGRAM

STATEMENT OF CAP GRANT

1. GRANT NO. 4005 - F / 0 (PROG. YR. / ACT. NO.)

2. NAME AND ADDRESS OF GRANTEE
Warren-Trumbull Council for Economic Opport.
262 East Market Street
Warren, Ohio 44481

2A. ORGANIZATION NO. 51075

3. NAME AND TITLE OF EXECUTIVE DIRECTOR
Lester Peterman, Executive Director

4. EFFECTIVE DATE OF GRANT ACTION: 10/1/71

5. END OF PROGRAM YEAR

6. TERMINATION DATE: 3/31/72

7. SECTION(S) OF EOA: 221

8. FEDERAL SHARE OF PROGRAM COST FOR THIS PROGRAM YEAR MAY NOT EXCEED ___ 80 %

PROGRAM ACCOUNTS APPROVED THIS GRANT ACTION FOR THIS PROGRAM YEAR — NO. / PROGRAM ACCOUNT NAME	FEDERAL SHARE: TOTAL FEDERAL SHARE (TOA)	FEDERAL SHARE: CARRY-OVER FUNDS ASSIGNED *	FEDERAL SHARE: ADDITIONAL FEDERAL FUNDS (NOA)	NON-FEDERAL SHARE	TOTAL PROGRAM: TOTAL COSTS	TOTAL PROGRAM: PERSONNEL COSTS	TOTAL PROGRAM: NON-PERSONNEL COSTS	NO. OF MOS.
CK1								
H 01 CK1 Administration	18,722	-0-	18,722	740	19,462	14,137	5,325	6
CK1 Neighborhood								
H 07 Service Systems	62,279	-0-	62,279	26,192	88,471	57,882	30,589	6
CK1								
H 17 Day Care	10,000	-0-	10,000	2,500	12,500	6,000	6,500	6
A. TOTALS CARRIED FORWARD FROM ATTACHED PAGES (if any)	-0-	-0-	-0-	-0-	-0-	-0-	-0-	
B. TOTAL APPROVED THIS GRANT ACTION FOR THIS PROGRAM YEAR	91,001	-0-	91,001	29,432	120,433	78,019	42,414	
C. TOTAL PREVIOUSLY APPROVED FOR THIS PROGRAM YEAR	-0-	-0-	-0-	-0-	-0-	-0-	-0-	
D. TOTAL APPROVED TO DATE FOR THIS PROGRAM YEAR	91,001	-0-	91,001	29,432	120,433	78,019	42,414	

9. STATEMENT OF OEO APPROVAL

In accordance with Column (5), Line B, are hereby obligated for the program proposed by the grantee as described above and in the attachments to this statement. Program account budgets are approved only to the extent they conform to applicable general flexibility guidelines or in accordance with [illegible] approval.

APPROVED BY: (Signature and title)

DATE

10. GRANTEE ACCEPTANCE OF GRANT

On behalf of the grantee, I accept the grant and all modifications, general and special conditions, and requirements contained in the attached ___ pages.

ACCEPTED BY: (Signature and title of authorized official)

11

APPLICATION FOR RECOGNITION OF A
COMMUNITY ACTION AGENCY

SECTION I. GENERAL INFORMATION

1. PROPOSED NAME OF COMMUNITY ACTION AGENCY

WARREN TRUMBULL COUNCIL FOR ECONOMIC OPPORTUNITY

2. MAILING ADDRESS (If unchanged)

A. NO. AND STREET	B. CITY	C. STATE	D. ZIP CODE
206 Pine St. S.E.	Warren	Ohio	44481

3. NAME OF PERSON TO CONTACT

James Shelton - Executive Director

4. TELEPHONE NO. (Include Area Code)

216-392-2532

5. NAME(S) OF POLITICAL JURISDICTION(S) DESIGNATING COMMUNITY ACTION AGENCY

Trumbull County Commissioners

6. IS THE DESIGNATED CAA ONE CURRENTLY APPROVED BY OEO?

☒ YES ☐ NO

7. IS THE DESIGNATED CAA

☐ A STATE OR LOCAL GOVERNMENT, ☐ SEPARATE PUBLIC AGENCY,

☒ A PRIVATE NON-PROFIT AGENCY, ☐ TRIBAL COUNCIL?

8. NAME(S) OF THE COMMUNITY ACTION AGENCY WHICH WILL BE REPLACED BY THE DESIGNATED CAA:

N.A.

9. DATE PROPOSED FOR ACTIVATION OF CAA

Continuing

10. HAVE ALL POLITICAL JURISDICTIONS WITHIN THE AREA COVERED BY THE CAA BEEN GIVEN AN OPPORTUNITY TO COMMENT ON, AND HAVE THEY RESPONDED TO, THE PROPOSAL?

☒ YES ☐ NO (Explain on separate sheet of paper.)

11. PUBLIC HEARING

A. DATE PUBLIC NOTICE OF HEARING WAS GIVEN	B. DATE PUBLIC HEARING WAS HELD
5-9-68	5-9-68

C. FORM IN WHICH NOTICE OF HEARING WAS GIVEN

Press release 5-10-68

D. WAS EXISTING CAA NOTIFIED OF HEARING?

☒ YES ☐ NO

CAP FORM 70 FEB 68

O.M.B. Circ. No. A-102

NOTIFICATION OF GRANT-IN-AID ACTION

1. State application identifier
2. Federal agency use by State central information reception system

3. Awarding agency
EXECUTIVE OFFICE OF THE PRESIDENT

4. Organizational unit
OFFICE OF ECONOMIC OPPORTUNITY

5. Administrative office
GREAT LAKES REGIONAL OFFICE

6. Address (Give City and County)
623 SOUTH WABASH — CHICAGO — ILLINOIS — 60605

7. Federal agency grant identifier: 4005 — 8. Type: F/S — 9. Name: CAA ADMINISTRATION NEIGHBORHOOD SERVICE SYSTEMS

10. Purpose
Refunding

11. Grantee
12. Name: WARREN-TRUMBULL COUNCIL FOR ECONOMIC OPPORTUNITY
13. Address (Give City and County): 206 PINE ST. S.E. — WARREN — OHIO — 44481

14. Grantee type (Enter only the single most appropriate item)
☐ a. State ☐ b. Interstate ☐ c. County ☐ d. City ☐ e. School district ☐ f. Special use ☒ g. Community action ☐ h. Sponsored organization ☐ i. Other

15. Application accept date: 70 08 01
16. Action date: 70 10 01
17. Effective starting date: 70 10 01
18. Ending date: 72 09 30

19. Type of action (Check as many items as apply to this action)
☐ a. New grant ☒ b. Continuation grant ☐ c. Supplemental grant (Federally funded in item 28) ☐ d. Change in existing grant: (1) Increase in duration (2) Decrease in duration (3) Cancellation (4) Increase(3) (5) Decrease(3)

20. Amount of Contribution
a. Federal: $ 160,995 (b. Supplemental: $) — b. State: $ — c. Local: $ — d. Other: $ 40,248

21. Catalog of Federal Domestic Assistance number (Check if used, classify in item 22): a. Program Number: 49.002 — b. Supplemental Program Number:

22. Project Budget Activities
a. Federal budget activity: 04-37-0500-0-1-550
a. Project name: — b. Proj. Num. — c. Sect. — d. Act. — e. Sub-Act. — b. Proj. Num. — c. Sect. — d. Act. — e. Sub-Act.

23. U.S. Code: 42 USC 2809

24. Facility location (Give facility grant actions only)
a. City — b. County

25. Remarks

S.F. 240 (Revised) (OMB A 200) June 1972 (Replaces all previous editions of the Federal Budget Circular A-102)

I hereby certify that the documents, CAP Form 70, Application for Recognition of a Community Action Agency, and Standard Form 240, Notification of Grant-in-Aid Action herewith attached, are true copies of instruments on file in Central Files, Region V, Office of Economic Opportunity and indicate that Warren Trumbull Council For Economic Opportunity is a private non-profit corporation of the State of Ohio who applied to OEO for recognition as a community

BEST COPY AVAILABLE

action agency in 1968. Said recognition was accorded and Warren Trumbull has been the recipient of grant-in-aid funds since that date under grantee #51075.

WILLIAM L. FOREMAN, Jr.,
Assistant General Counsel.

STATE OF ILLINOIS, COUNTY OF COOK

I, William L. Foreman, Jr., on oath depose and say that I have read the foregoing by me subscribed and the same is true.

WILLIAM L. FOREMAN, Jr.

Subscribed and sworn to before me this 5th day of December, A.D. 1972.

CARRIE W. STINSON,
Notary Public.

In the United States District Court for the Eastern District of Tennessee, Southern Division

Civil Action No. 6218

SHARON DIANNE ANDERSON

v.

DAVID SIMPSON

AND

Civil Action No. 6358

REBECCA GAIL ROOPE AND NORMAN H. ROOPE

v.

DAVID EUGENE SIMPSON, DAVID ERNEST SIMPSON, AND UNITED STATES OF AMERICA

MEMORANDUM AND ORDER

The above styled consolidated actions arose out of a single-car motor vehicle accident which occurred upon

October 1, 1970. The following facts appear to be undisputed in the record. The plaintiffs, Rebecca Gail Roope and Sharon Dianne Anderson (hereinafter referred to as plaintiffs) were riding as guest passengers in an automobile driven by the defendant, David Eugene Simpson, and owned by his father, David Ernest Simpson. At the time of the accident the plaintiffs and defendant David Eugene Simpson were students attending Lee College in Cleveland, Tennessee, and were participating in a work study program in conjunction with Lee College. Under the terms of the program the plaintiffs and the defendant were assigned to off-campus employment with Progress for People, Inc., a community action agency. One of their duties was to arrange for a tutorial program for elementary school children in the Bradley County Area. Upon October 1, 1970, plaintiffs and defendant were returning from Brittsville, Tennessee, where they had been working on such a program with local school officials when the accident occurred.

In Civil Action No. 6218, suit was instituted against the driver upon a negligence theory. The defendant driver whereupon filed a motion to dismiss, contending that he was an employee of the United States at the time the accident occurred and that suit should be against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. Plaintiff subsequently amended her complaint to add the United States as a party defendant pursuant to said Act. (See Court File Index No. 8.)

In Civil Action No. 6358, plaintiff and her father sued the defendant and his father, David Ernest Simpson, upon a negligence theory and alternatively against the United States pursuant to the Federal Tort Claims Act. (For a Memorandum relating to prior pending motions see Index No. 11 in Civil Action No. 6358, and Index No. 8 in Civil Action No. 6218.)

Civil Action No. 6218 is presently before the Court upon the following motions: (1) motion of defendant, United States, for summary judgment; (2) motion of plaintiff for partial summary judgment; and (3) motion of plaintiff to dismiss claim against United States. Civil Action No. 6358 is before the Court upon the following motions. (1) motion of defendant United States for summary judgment; and

(2) motion of defendant David Ernest Simpson for summary judgment.

Motion of the United States for Summary Judgment

The motion for summary judgment filed by the United States is the same in both cases. The Government contends that the suit should be dismissed against it upon the following grounds: (1) the driver of the vehicle was not an employee of the United States; and (2) even if the driver was an employee of the United States acting within the scope of his employment, it is undisputed that the plaintiffs would also be employees of the United States acting within the scope of their employment, and their remedy would be pursuant to the Federal Employees Compensation Act, 5 U.S.C. §§ 8101, et seq., and not pursuant to the Federal Tort Claims Act. The Court is of the opinion that the Government's motion should be granted and that it should be dismissed from each lawsuit. In so concluding the Court is of the opinion that no issue exists in the case but that the defendant driver was not an employee of the United States at the time of the accident.

Participation in a federally sponsored work-study program does not per se make the student an employee of the United States. *Waters* v. *United States*, 328 F. Supp. 812, 814 (E.D. Ark., 1971).

In determining whether a person is an employee of the United States, federal law governs. *Fisher* v. *United States*, 356 F. 2d 706 (6th Cir., 1966). In this regard Section 2671 of Title 28, United States Code, provides as follows:

> "As used in this chapter and sections 1346(b) and 2401(b) of this title, the term—
>
> " 'Federal agency' includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.
>
> " 'Employee of the Government' includes officers or employees of any federal agency . . . and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation."

The argument is made that defendant and plaintiffs are employees of Progress for People, Inc., a federally sponsored community action agency, and that Progress for People, Inc. is accordingly a federal agency within the perview of 28 U.S.C. § 2671. No cases have been cited unto the Court nor have any cases been found pertaining to the status of community action agencies under the Economic Opportunities Act.

The Economic Opportunity Act, 42 U.S.C. §§ 2701 et seq., under which Progress for People, Inc. is established and funded, was enacted by Congress in 1964. Its general purpose was to fund locally sponsored and administered programs for providing economic opportunity to low income segments of society. See Legislative History, 1964 U.S. Code & Congressional News pp. 2909, et seq.

A community action agency, under the Act, may be either a state or local political subdivision or a public or private non profit corporation or agency designated by the state. See 42 U.S.C. §§ 2790, et seq. Although composition of the boards and broad policy considerations are subject to certain federal regulation pursuant to the legislation, the intent of the legislation is to provide for local community origination and administration of programs of economic assistance, with federal participation limited to the financing of approved programs. As provided for in the legislative history:

> "This is based on the belief that local citizens know and understand their communities best and that they will be the ones to seize the initiative and provide sustained vigorous leadership. It is based, too, on the conviction that communities will commit their ideas and resources and assume responsbility for developing and carrying out local action programs. Thus, the role of the Federal Government will be to give counsel and help, *when requested*, and to make available substantial assistance in meeting the costs of these programs." 1964 U.S. Code & Congressional News at p. 2909.

Pursuant to this Act and upon local government initiative, the Bradley-Cleveland Community Action Corporation, a Tennessee non profit corporation, was organized and was

approved for receipt of federal funds for the carrying out of certain programs in Bradley County, Tennessee. The name of the Corporation was later changed to Progress for People, Inc. This corporation, as one of its programs, entered into an agreement with Lee College to conduct a work-study program using college students. The students involved in this litigation were participants in that program.

It is clear from a reading of the Act itself and from the legislative history that a community action agency, such as the one here involved, would not become a federal agency so as to make the employees thereof a federal employee. Although the program is addressed to rectifying a national concern which could properly be performed by an agency of the Federal Government, Congress saw fit to provide for local control and development of the programs. Although the Federal Government requires that certain guidelines be followed by such agencies, such as the composition of the Board of Directors and that certain administrative standards and rules be established, it does not determine the type of program to be developed nor does it determine how the plan is to be implemented. Finally, it should be noted that the United States does not finance the entire program. Rather, its funding is generally limited to 80 percent of approved programs.

The Court is accordingly of the opinion that Progress for People, Inc., a community action agency created pursuant to the Economic Opportunity Act of 1964, is not a "federal agency" within the meaning of 28 U.S.C. § 2671. The defendant driver accordingly was not an employee of a "federal agency" and there is no cause of action here stated that would fall within the Federal Tort Claims Act.

It should be further noted that the Government would be subject to being dismissed from this lawsuit even were the Court to find the defendant driver to have been an employee of the United States. It is undisputed that the driver and the passengers were each similarly engaged in the performance of their duties as employees participating in a community action program at the time the accident occurred. Accordingly, if the defendant driver were found to be an employee of the Federal Government at the time of the accident, then likewise the plaintiffs would have been employees of the United States. The only remedy in this event

would have been to seek relief pursuant to the Federal Employees Compensation Act, 5 U.S.C. §§ 8101, et seq.

Motion of the Plaintiffs for Partial Summary Judgment

One defense asserted in these cases is that the plaintiffs and the defendant driver were each employees of Lee College and that as such the exclusive remedy of the plaintiffs would be pursuant to the Tennessee Workmens Compensation Law. The plaintiff, Sharon Dianne Anderson, has filed a motion for partial summary judgment upon this issue. Although no similar motion has been filed on behalf of the plaintiffs in Civil Action No. 6358, the issues are identical and an order will enter as though identical motions for partial summary judgment had been filed. Having considered the motion for partial summary judgment, the Court is of the opinion that no issue of fact exists but that the parties to this lawsuit were not employees of Lee College, but rather were employees of Progress for People, Inc. It is likewise undisputed that Progress for People, Inc. was not within the coverage of the Tennessee Workmens Compensation Law. The plaintiffs' motion for partial summary judgment will accordingly be sustained as to this defense.

Motion of the Defendant, David Ernest Simpson, for Summary Judgment

The defendant, David Ernest Simpson, has filed a motion for summary judgment upon the issue of imputed negligence. The plaintiff alleged that the negligence of the driver would be imputed to the owner pursuant to the "Family Purpose Doctrine." During the hearing upon pending motions, plaintiffs' attorney conceded that the Family Purpose Doctrine was not applicable in this case. Accordingly, defendant's motion for summary judgment should be granted.

However, the complaint against David Ernest Simpson cannot be dismissed upon this state of the record. The complaint alleges independent acts of negligence on his part by furnishing a vehicle with defective brakes to his son and permitting the vehicle to be driven upon the roadways. Accordingly, upon this state of the record, disputed issues of fact remain for the jury.

It is accordingly ORDERED:

(1) That the United States of America be dismissed as a party to these lawsuits;

(2) That the motion of the plaintiffs for partial summary judgment be sustained as to the defense that these lawsuits are barred by the Tennessee Workmens Compensation Law; and

(3) That the motion of the defendant, David Ernest Simpson, for partial summary judgment upon the family purpose allegations of the complaint be sustained, but that the said defendant remain a party to the lawsuit in Civil Action No. 6358 under the allegations of independent acts of negligence made therein.

Approved for entry.

FRANK W. WILSON,
U.S. District Judge.

In the United States District Court, Northern District of Ohio, Eastern Division

Civil Action No. C 72–260–Y

JOSEPH V. ORLEANS, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. PRELIMINARY STATEMENT OF THE NATURE OF THE CASE AND PROOFS OFFERED BY PLAINTIFFS

A. Proofs offered by the plaintiffs in support of their position and in opposition to the motion for summary judgment of the defendant and affidavit are as follows:

1. Affidavit of William L. McLain attached hereto;
2. Affidavit of John L. Breckenridge attached hereto;
3. Affidavit of Sidney I. Roberts attached hereto;

4. Deposition of Wendell Verduin and various exhibits identified therein and attached thereto—on file with the Court;
5. Deposition of Ellen Stanton on file with the Court;
6. Deposition of Leaster Peterman on file with the Court;
7. Deposition of Robert Howard Walker on file with the Court;
8. Deposition of Dr. Edward E. Bauman on file with the Court.

B. Nature of the case: This is an action under the Federal Tort Claims Act to recover damages by reason of personal injuries and loss of services arising out of an automobile accident that happened on September 3, 1970, outside of Conneaut Lake in Mercer County, Pennsylvania. At the time, the minor plaintiff was riding in an automobile being driven by Robert Walker loaded with children returning from an outing organized and sponsored by the Westlawn Neighborhood Opportunity Center, an activity of The Warren-Trumbull Council for Economic Opportunity (hereinafter referred to as WTCEO). Most of the children had gone on the outing in a van owned by the WTCEO and had returned earlier in the evening. A car being driven by Robert Walker and another car were left to follow later. At the time of the accident, Walker was trying to catch up with the other car and went off the road and struck a parked truck, causing the minor plaintiff injuries requiring the amputation of his right arm.

II. FEDERAL TORT CLAIMS ACT—DEFINITIONS AND PRINCIPLES OF CONSTRUCTION

A. Definitions: It is to be noted at the outset that the statutory definitions depart from the ordinary commonlaw rules of respondeat superior. The pertinent portion of the definition of the term "Employee of the Government" includes "persons acting on behalf of a Federal Agency in an official capacity temporarily or permanently in the service of the United States, whether with or without compensation."

The Act states that the term "Federal Agency" includes "(1) the executive departments, (2) the military depart-

ments. (3) the independent establishments of the United States, and (4) *corporations primarily acting as instrumentalities or agencies of the United States,* but (5) does not include any contractor with the United States." 28 U.S.C., part. 2671.

From the foregoing, it is obvious that if the WTCEO is a Federal Agency, its employees in charge of this trip and Robert Walker, the driver of the automobile, were in the employ of the Government within the definition of the Federal Tort Claims Act.

B. Principles of Construction:

> "Since the Tort Claims Act represents 'the culmination of a long effort to mitigate unjust consequences of sovereign immunity from suit,' the Act should be given a construction which will give full scope to the Government's relinquishment of its historic immunity from suit, one which will carry out the purposes of the legislation permitting the United States to be sued for tort and relieving the legislature of the burden of private relief bills."

Jason, Personal Injury, Handling Federal Tort Claims, Par. 69, 3–15, citing numerous cases.

Many cases support the proposition that liberal construction shall be given to the Federal Tort Claims Act. *City of Pittsburgh* v. *United States,* 359 Fed. 2d 564, 567 (3d Cir. Pa. 1966); *Pittman* v. *United States,* 341 Fed. 2d 739, 741 (9th Cir. Cal. 1965); *United States* v. *Alexander,* 238 Fed. 2d 314, 317 (5th Cir. Ga. 1956); *O'Toole* v. *United States,* 206 Fed. 2d 912, 918 (3d Cir. Del. 1953); *Somerset Seafood Co.* v. *United States,* 193 Fed. 2d 631, 634 (4th Cir. Md. 1951); *Merchants Nat'l Bank & Trust Co. of Fargo* v. *United States,* 272 Fed. Supp. 409, 417–418 (D.N.D. 1967); *Gilroy* v. *United States,* 112 Fed. Supp. 664, 666 (D.D.C. 1953); *Rushford* v. *United States,* 92 Fed. Supp. 874, 875 (NDNY 1950), aff'd 204 Fed. 2d 831 (2d Cir. N.Y. 1953).

III. ISSUE RAISED BY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant contends that WTCEO is not a Federal Instrumentality and therefore its employees are not employees of the United States within the scope of the Federal Tort Claims Act.

IV. WTCEO WAS A CORPORATION PRIMARILY ACTING AS AN INSTRUMENTALITY OR AGENCY OF THE UNITED STATES

A. The Economic Opportunity Act makes Community Action Agencies the prime instrumentalities for carrying out the intent of the Act.

The Economic Opportunity Act of ~~1964~~ as amended through December 30, 1969, and in effect at the time of this accident provided for the creation and funding of "Community Action Agencies" and the carrying out of certain programs by said agencies. Sec. 201 and Sec. 210 of the Act (42 U.S.C. 2781 and 42 U.S.C. 2790 respectively). The Act also provided for the development of "neighborhood centers" by the Community Action Agencies. Sec. 224, 42 U.S.C. 2811. A copy of the declaration and purpose of the Economic Opportunity Act and the provisions of Title II, Parts A, B and C, attached hereto marked "Appendix A" for the convenience of the Court.

The Act also created the Office of Economic Opportunity to be headed by a Director appointed by the President with the advice and consent of the Senate. Title VI, Sec. 601(a), 42 U.S.C. 2941. (Copies of the sections dealing with the appointment of authority of the Director are attached hereto as "Appendix B" for the convenience of the Court.)

The Director published a large number of regulations, restrictions and Community Action Memos, which are on file with the Court. Among others, Community Action Memo 9(a) of 2/21/67 specifically recognizes that the Community Action Agencies were intended by Congress to be the principal instruments to carry out the Community Action programs provided for by Title II, Part A, of the Economic Opportunity Act.

B. WTCEO was in fact created and existed for the sole purposes of acting as an instrumentality or agency of the United States to carry out programs established by the Economic Opportunity Act in Warren and Trumbull County.

1. The affidavit of Mr. McLain has attached to it the Articles of Incorporation, par. 2 of which is as follows:

> "To coordinate efforts of local government units, especially the City of Warren, the Warren Board of Education, Trumbull County and others, and private agencies, in programs devised under, or which shall be devised under the Economic Opportunity Act of 1964."

2. The affidavit of Mr. Breckenridge, one of the founders and thereafter an active officer or board member of the WTCEO, states:

> "That the corporation was formed for the purpose of obtaining funds made available through the Economic Opportunity Act of 1964 and to act primarily as an instrumentality of the United States by carrying out the purposes of the Economic Opportunity Act. The corporation was carefully organized and the by-laws and regulations tailored to come within the restrictions of the Economic Opportunity Act.
>
> After the organization of the Warren Council for Economic Opportunity, Inc., it was funded almost totally by Federal funds made available through the Economic Opportunity Act, the only exception being some credit that may have been given for "in kind" services rendered by local citizens. Its management and operation were under the direct supervision of the Regional Director of the Office of Economic Opportunity in Chicago.
>
> The projects undertaken were those suggested by the Economic Opportunity Act or the directives of the Economic Opportunity Administration.
>
> One of the projects undertaken by the Warren Council for Economic Opportunity, Inc was the Westlawn Neighborhood Opportunity Center, which project was set up in accordance with the provisions of the Economic Opportunity Act of 1964 and more specifically, that portion at 42 U.S. Code Annotated, Section 2811, which reads as follows:
>
> "The director shall encourage the development of neighborhood centers designed to promote the effectiveness of needed services in such fields as . . . child and economic development . . ."
>
> The Affiant says that from the time of the organization of the Warren Council for Economic Opportunity, Inc. and the Westlawn Neighborhood Opportunity Center, the Warren Council for Economic Opportunity, Inc. and Westlawn Neighborhood Opportunity Center acted as agencies to serve and assist the poor in the methods and manners outlined and prescribed by the Economic Opportunity Act and numerous instructions, restrictions and requirements of the Director of the Office of Economic Opportunity. These instructions and requirements directed the manner in which the Warren Council for Economic Opportunity, Inc. and the Westlawn Neighborhood Opportunity Center be organized, the classes of persons who were to be employed as directors or serve as trustees, the nature and purpose of the projects to be undertaken and the methods for carrying out such projects. Before funding was granted, the United States of America, through the Office of the Director of Economic Opportunity and his regional directors, was required to approve projects and the outlined approach for conducting them. After a project was approved, its operation was supervised by the Office of the Regional Directors in Chicago.
>
> Without the Economic Opportunity Act and the funds made available thereunder, the Warren Council for Economic Opportunity, Inc. would not have been created and could not have operated or existed."

3. The depositions of Peterman and Verduin and the affidavit of Sidney Roberts confirm the fact that the only funds other than so-called "in kind" services received by WTCEO were in Federal funds provided under the Economic Opportunity Act.

C. WTCEO was closely controlled by the Federal Government.

1. President Nixon, our Chief Executive, made this statement as quoted in the New York Times, Sunday, February 25, 1973, page one, column one:

> "President Nixon, in a radio address to the nation in explaining his reasoning for dismantling OEO and similar programs, said that such efforts as the OEO were 'laudable' but 'the results in case after case amount to dismal failure.'
>
> "Part of the solution, Mr. Nixon suggested, was to replace such 'narrow, fragmented, categorical' programs . . . until now *'closely controlled from Washington'* with special revenue-sharing grants to be used as 'each state and community judges best to meet its own special needs.'"

2. The documents which include the instructions and restrictions issued by the Director, which are on file with the Court, contain hundreds of pages of requirements. It might be noted by way of illustration that plaintiff's deposition Exhibit I for identification dated January 31, 1973,

contains the following message from Sargent Shriver, Director of the Office of Economic Opportunity:

> "In 1967, by the largest favorable vote in OEO's history, the Congress reaffirmed its commitment to the role of Community Action in the War on Poverty. At the same time the Congress significantly modified the ways in which Community Action Agencies are to be formed and operated . . ."

The pages which follow contain detailed statements of policy and administrative procedure designed to carry out the changes in the law. (Thereafter follows more than 100 pages of closely typed instructions and appendices outlining the changes.)

3. The Act itself contained detailed instructions as to the programs to be carried out and these were augmented by multiple instructions from the Director covering in detail personnel policies (Memo 23 attached to affidavit of Sidney Roberts) requirements for the membership of the governing board (Sec. 211 of the Economic Opportunity Act), regulations covering the use of buses, automobiles and other vehicles for the transportation of children, parents, etc., (Depo. Verduin, pp. 55 and 56) definition of people who may be benefited, to wit, "poor" (Memo 60041(b)). The Act itself requires that each Community Action Agency adopt a systematic approach to the achievement of the purposes of the Act (221(d)).

The Act specifically gives the Director of the Office of Economic Opportunity without limitation power to "prescribe such rules and regulations . . . and generally perform such functions and take such steps as he may deem necessary or appropriate to carry out the provisions of this Act." (Sec. 602(n))

Also, specific regulations covering in detail travel regulations (CAP Memo 35-3(a)); use of project vehicles (CAP Memo 72); reports required (CAP Memo 71); public meetings to be held and manner of notification for same (OEO instruction 7042-1).

The extent of power to control is also evidenced by the affidavit of Sidney Roberts, who states that his actual appointment as Chairman of the governing board was made by the Regional Office of the Office of Economic Opportunity.

But even more conclusive than the detailed control evidenced by the foregoing comprehensive regulations and instructions, is the fact that the Director specifically retained the right to control in all respects in which that right was not specifically exercised by an OEO instruction—OEO instruction 6002-01 providing as follows:

> "The applicant agency has considerable flexibility in determining what activities it will undertake, the manner in which these activities will be undertaken, and the families and individuals that will be assisted, *subject to the policies and procedures in this guide and to such further policies and procedures as may be issued by the OEO.*"

V. SPECIFIC DISCUSSION OF DEFENDANT'S BRIEF AND SUPPORTING DOCUMENTS

A. The affidavit of Wendell Verduin is the only document offered in support of defendant's motion. It contains largely legal conclusions and more important, does not state that WTCEO was not a corporation acting primarily as an instrumentality of the United States. Although Mr. Verduin adroitly attempted to avoid answering questions in his deposition, he did admit that WTCEO was funded by the United States to implement the purposes of the Economic Opportunity Act. This admission absent any proof by the defendant that the WTCEO was acting otherwise than as an instrumentality of the United States, would seem to conclude the issue adversely to the defendant.

B. The only case cited in support of defendant's position is the unreported District Court Memorandum Opinion in *Anderson* v. *Simpson, et al.* The opinion does not state enough facts regarding the particular agency involved to determine whether the agency involved was primarily acting as an instrumentality of the United States. The Court based his finding on two propositions, one that the type of program and the plan for its implementation of that agency were not determined by the Federal Government. In the instant case, the type of program out of which this accident arose, namely the Neighborhood Opportunity Center, was specified by the Federal Government and plans for its implementation were required and approved. The second basis of the Court for his finding was that the United States did not finance the entire program. The affidavits and depositions clearly indicate in the instant case that the United

States did finance the entire program, the local contributions being limited to "in kind" services which apparently were not carefully counted, and seemingly is a sort of fiction in these programs.

As the Court also points out, his finding that defendant driver was not an employee of a Federal Agency was not essential to the case because had he found the defendant driver to be an employee, plaintiff would have been barred by the fellow-servant rule.

VI. DISCUSSION AND SUMMARY

There is an annotation at 14 L. Ed. 2d 892, Who is an "Employee of the Government" for Whose Conduct the United States May be Held Liable Under the Federal Tort Claims Act—Federal Cases, and at page 901 the editors say:

> "7. *Status of immediate employer as federal agency or instrumentality.*
>
> In a number of cases it has been held or assumed that a particular person was the 'employee' of a particular immediate employer, but the question whether the person was an 'employee of the government,' within the meaning of the Federal Tort Claims Act, has depended upon whether such employer could properly be considered an agency or instrumentality of the federal government, and the determination whether a particular employee's immediate employer was an agency or instrumentality of the federal government has depended upon the facts and circumstances of each individual case, especially those relating to the nature of the particular immediate employer involved."

In order to view this case realistically, it must be accepted that government spending for the purpose of aiding the poor, i.e. "the war against poverty" is not essentially different than the war against communism. The instrumentalities created to conduct the war against poverty are not different from instrumentalities created to support the armed forces.

WTCEO was an agency totally committed to carry out the Federal purposes of the Economic Opportunity Act with Federal funds.

A case very close to the instant case has been decided in this district. *Toth* v. *United States*, 107 Fed. Supp. 37.

This case involved a death allegedly resulting from negligence of employees of the Youngstown Metropolitan Housing Authority. The Youngstown Metropolitan Housing Authority was a corporation which managed the Westlake Housing Project of Youngstown, Ohio, which of course was Federally funded. The Court held that the local housing authority was "acting as an instrumentality of the United States since it was required to engage personnel and provide equipment in accordance with the operating budget, management program and Government determined wage scale. This is almost precisely the situation we have in the instant case—personnel must be hired in accordance with regulations imposed to carry out the specified government programs with the Federal funds allotted.

The District Court for the Western District of Pennsylvania held similarly in *Schetter* v. *Housing Authority of the City of Erie*, 132 Fed. Supp. 149. A number of other cases have held that various organizations constituted instrumentalities of the United States. *United States* v. *Holcombe*, (1960 C.C.A. 4 Va.) 277 Fed. 2d 143, involved property allegedly damaged through the negligence of a civilian employee of a commissioned officers' mess at a United States Naval Air Station, notwithstanding the fact that the mess was financed by its own operation and was not supported by appropriations out of the United States Treasury. *Delgado* v. *Akins*, (1964 Dist. Ct. Ariz) 236 Fed. Supp. 202 held that a field reporter working for an agricultural stabilization and conservation service county committee was an employee of the United States within the meaning of the Tort Claims Act. The court emphasized the control which the United States Department of Agriculture exercised over the field reporter, pointing out that he was among the employees referred to in the handbook, bulletins, rules, and regulations promulgated by the Department of Agriculture and dealing with the general standard of employment, standard of conduct, types of misconduct subjecting employees to disciplinary action, and various similar matters. Moreover, the court noted that the field reporter was subject to spot checks which were subject to audit and review from the Department of Agriculture in Washington D.C., that the county committee was listed under the Federal Department of Agriculture in various places and was treated by the Department

as one of its instrumentalities, that the county committee's funds came from the United States Treasury, that various written and other materials provided to the county committee and its employees were from the United States Department of Agriculture, and that the salary range and steps were controlled by the Department's handbook. In the instant case, it is agreed that WTCEO was recognized as an instrumentality to carry out the purposes of the Economic Opportunity Act and was monitored by the office of Economic Opportunity (Depo. of Verduin and Peterman.)

Some other cases finding agencies to be instrumentalities of the United States are *Brucker* v. *United States,* (1964 CA9 Cal) 338 Fed. 2d 427; *Roger* v. *Elrod,* (1954, D.C. Alaska) 125 Fed. Supp. 62; and *United States* v. *Hainline,* (1963, CA10 Kan) 315 Fed. 2d 153.

From the foregoing, we respectfully submit that the facts as established by affidavit and deposition conclusively prove that the WTCEO in operating its Neighborhood Opportunity Center was acting as an instrumentality of the United States solely for the purposes of carrying out the aims of the Economic Opportunity Act and its employees were by virtue of the definition in the Federal Tort Claims Act, employees of the Federal Government.

We respectfully submit that defendant's motion for summary judgment be overruled.

Respectfully submitted.

PFAU, COMSTOCK & SPRINGER.
WILLIAM E. PFAU, Jr.,
Trial Counsel,
Youngstown, Ohio,
Attorneys for the Plaintiffs.

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil Action No. C72-260-Y
Judge Leroy J. Contie, Jr.

JOSEPH V. ORLEANS, ET. AL., PLAINTIFFS
vs.
UNITED STATES OF AMERICA, DEFENDANT

Affidavit

Personally appeared before me WILLIAM P. McLAIN, who after first being duly sworn upon his oath, says that he is an attorney at law, licensed to practice in the State of Ohio; that as City Solicitor, City of Warren, Ohio he was requested to incorporate a corporation not for profit named the Warren Council for Economic Opportunity, Inc., in the year 1965; that attached hereto and marked Exhibit "A" is a true copy of the Articles of Incorporation;

That the purpose of organizing and incorporating this entity was to obtain funds from the Federal Government under the Economic Opportunity Act of 1964 by setting up an agency to act as an instrumentality to carry out the purposes and intentions of the Economic Opportunity Act of 1964;

That such organization did continue to exist and operate for these purposes; that on June 22, 1970, the Affiant prepared and filed a Statement of Continued Existence, copy of which is attached here to and marked Exhibit "B".

Further the Affiant sayeth naught.

.....
WILLIAM P. McLAIN.

State of Ohio }
County of } *ss:*

SWORN TO before me and subscribed in my presence this ..... day of ....., 1973.

.....
Notary Public.

By ----------
Date ----------
Amount ----------
FOR OFFICIAL
USE ONLY

COPY

ARTICLES OF INCORPORATION

of

THE WARREN COUNCIL FOR ECONOMIC OPPORTUNITY, INC.

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, not for profit, under Sections 1702.01 et seq., Revised Code of Ohio, do hereby certify:

FIRST. The name of said corporation shall be THE WARREN COUNCIL FOR ECONOMIC OPPORTUNITY, INC.

SECOND. The place in Ohio where the principal office of the corporation is to be located is City of Warren, Trumbull County.

THIRD. The purpose or purposes for which said corporation is formed are:

(1) To do all things necessary or proper to aid in eliminating poverty in Trumbull County, Ohio, directly or through other organizations;

(2) To coordinate efforts of local government units, especially the City of Warren, the Warren Board of Education, Trumbull County and others, and private agencies, in programs devised under, or which shall be devised under the Economic Opportunity Act of 1964;

(3) To study, plan, encourage, contract for, and administer programs aimed at increasing opportunities for the victims of poverty; to receive, administer, and disburse funds from whatever source received for these purposes; to employ and make available professional staff services for such purposes;

(4) Either directly or indirectly, and either alone or in conjunction or cooperation with other persons, institutions

and organizations of any sort or nature, to do any and all lawful acts and things, and to engage in any and all lawful activities which may be necessary or appropriate in connection with one or more of such purposes;

(5) In general, to do all things and to exercise all rights and powers permitted to non-profit charitable corporations organized under the laws of the State of Ohio to foster or attain one or more of such purposes.

In carrying out its purposes and in exercising its powers, the Corporation shall be subject to the limitations that (a) no part of its net earnings shall inure to the benefit of any private shareholder or individual, (b) no part of its activities shall be carrying on propaganda, or otherwise attempting, to influence legislation, or the advocacy of, or campaigning for, objectives which can only be obtained by legislation or the defeat of proposed legislation, (c) it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, and (d) the Corporation shall not engage in any activities which would cause the Corporation to fail to qualify under Section 501(c)(3) of the U.S. Internal Revenue Code or successor provisions thereto.

EXHIBIT "A"

Corporation Number 339272
Approved IW)CC—
Date 6/24/70
Fee $1.00
FOR OFFICIAL
USE ONLY
160-134

STATEMENT OF CONTINUED EXISTENCE

The Warren Council for Economic Opportunity, a corporation not for profit organized under the provisions of Chapter 1702 of the Revised Code, (or previous laws, or under special provisions of the Revised Code, or created prior to September 1, 1851 and having elected to be gov-

erned by subsequent laws and whose articles or other documents are filed with the Secretary of State), and not specifically exempted by this section, makes the following verified statement to the Secretary of State:

1. Corporation name the Warren Council for Economic Opportunity, Inc.

2. Location of principal office Warren, Ohio Trumbull County

3. Date of incorporation April 7, 1965 Filed April 7, 1975

4. The corporation is still actively engaged in exercising its corporate privileges.

5. a. Name of statutory agent William P. McLain

b. Address of agent 391 Mahoning Avenue, N.W., Warren, Ohio 44483

IN WITNESS WHEREOF, said the Warren Council for Economic Opportunity, Inc. has caused this statement to be executed by an officer (trustee, three members in good standing) duly authorized in the premises, this 22nd day of June, 1970.

THE WARREN COUNCIL FOR ECONOMIC OPPORTUNITY, INC.
(Name of Corporation)

By LES PATEMAN
(Title) *Chairman, Board of Trustees.*
Filing Fee: $1.00

EXHIBIT "B"

B685 548
Receipt and Certificate No. 12608
THE WARREN COUNCIL FOR ECONOMIC OPPORTUNITY, INC.

No. 339252

Domestic Corporations
- Articles of Incorporation
- Amendment
- Merger/Consolidation

Miscellaneous Filings
- Annexation/Incorporation —City or Village
- Reservation of Corporate

Domestic Corporation—Cont.
- Dissolution
- Agent
- Re-instatement
- Certificates of Continued Existence
- Miscellaneous

Foreign Corporations
- License
- Amendment
- Surrender of License
- Appointment of Agent
- Change of Address of Agent
- Change of Principal Office
- Re-instatement
- Form 7
- Penalty

Miscellaneous Filings—Cont.
- Names
- Registration of Name
- Registration of Name Renewals
- Registration of Name— Change of Registrants Address
- Trade Mark
- Trade Mark Renewal
- Service Mark
- Service Mark Renewal
- Mark of Ownership
- Mark of Ownership Renewal
- Equipment Contract/ Chattel Mortgage
- Power of Attorney
- Service of Process
- Miscellaneous
- Assignment—Trade Mark, Mark of Ownership, Service Mark, Registration of Name

I certify that the attached document was received and filed in the office of TED W. BROWN, Secretary of State, at Columbus, Ohio on the 24th day of June A.D. 1970, and recorded on Roll B685 at Frame 548 of the RECORDS OF INCORPORATION and MISCELLANEOUS FILINGS.

TED W. BROWN,
Secretary of State.

Filed by and Returned To: Warren-Trumbull Council for Economic Opportunity, 206 Pine, S.E., Warren, Ohio 44481.
Fee received: $1.00.
Name:
THE WARREN COUNCIL FOR ECONOMIC OPPORTUNTIY, INC.

In the United States District Court for the Northern District of Ohio, Eastern Division
Civil Action No. C72-260-Y
Judge Leroy J. Contie, Jr.

JOSEPH V. ORLEANS, ET AL., PLAINTIFFS
vs.
UNITED STATES OF AMERICA, DEFENDANT

Affidavit

Personally appeared before me JOHN L. BRECKENRIDGE, who after first being duly sworn upon his oath, says that he is and has been an attorney at law and a resident of Trumbull County, Ohio, for a considerable period of time before 1965; that following the enactment of the Economic Opportunity Act of 1964 by the Legislature of the United States and the creation of the Office of Economic Opportunity, the Affiant was active in the formation and management of the Warren Council for Economic Opportunity, Inc., serving at various times both as president and member of the Board of Trustees, and was regularly in attendance at meetings from the time before the corporation was formed until after November 20, 1968.

That the corporation was formed for the purpose of obtaining funds made available through the Economic Opportunity Act of 1964 and to act primarily as an instrumentality of the United States by carrying out the purposes of the Economic Opportunity Act. The corporation was carefully organized and the by-laws and regulations tailored to come within the restrictions of the Economic Opportunity Act.

After the organization of the Warren Council for Economic Opportunity, Inc., it was funded almost totally by Federal funds made available through the Economic Opportunity Act, the only exception being some credit that may have been given for "in kind" services rendered by local citizens. Its management and operation were under

the direct supervision of the Regional Director of the Office of Economic Opportunity in Chicago.

The projects undertaken were those suggested by the Economic Opportunity Act or the directives of the Economic Opportunity Administration.

One of the projects undertaken by the Warren Council for Economic Opportunity, Inc., was the Westlawn Neighborhood Opportunity Center, which project was set up in accordance with the provisions of the Economic Opportunity Act of 1964 and more specifically, that portion at 42 U.S. Code Annotated, Section 2811, which reads as follows:

> The director shall encourage the development of neighborhood centers designed to promote the effectiveness of needed services in such fields as * * * child and economic development * * *

And also, the provisions of 42 U.S.C.A., Sections 2701 et seq.

The Affiant says that from the time of the organization of the Warren Council for Economic Opportunity, Inc. and the Westlawn Neighborhood Opportunity Center, the Warren Council for Economic Opportunity, Inc. and Westlawn Neighborhood Opportunity Center acted as agencies to serve and assist the poor in the methods and manners outlined and prescribed by the Economic Opportunity Act and numerous instructions, restrictions and requirements of the Director of the Office of Economic Opportunity. These instructions and requirements directed the manner in which the Warren Council for Economic Opportunity, Inc. and the Westlawn Neighborhood Opportunity Center be organized, the classes of persons who were to be employed as directors or serve as trustees, the nature and purpose of the projects to be undertaken and the methods for carrying out such projects. Before funding was granted, the United States of America, through the Office of the Director of Economic Opportunity and his regional directors, was required to approve projects and the outlined approach for conducting them. After a project was approved, its operation was supervised by the Office of the Regional Directors in Chicago.

Without the Economic Opportunity Act and the funds made available thereunder, the Warren Council for Economic Opportunity, Inc. would not have been created and could not have operated or existed.

Further the Affiant sayeth naught.

.....

JOHN L. BRECKENRIDGE.

State of Ohio
County of } *ss:*

SWORN TO before me and subscribed in my presence this ..... day of ....., 1973.

.....

Notary Public.

In the United States District Court for the Northern District of Ohio, Eastern Division
Civil Action No. C72-260-Y
Judge Leroy J. Contie, Jr.

JOSEPH V. ORLEANS, ET AL., PLAINTIFFS
vs.
UNITED STATES OF AMERICA, DEFENDANT
Affidavit

Personally appeared before me SIDNEY I. ROBERTS, who after first being duly sworn and affirmed, says that in October of 1972, he was appointed directly by the Regional Office of the Office of Economic Opportunity to be chairman of the governing board of The Warren-Trumbull Council for Economic Opportunity and that he was asked by the Chicago Regional Office to re-organize the Warren-Trumbull Council for Economic Opportunity. Presently, he has custody of the records of the Warren-Trumbull Council for Economic Opportunity and portions of certain of these records are attached hereto.

Further, the Affiant says that presently the entire funding of the Warren-Trumbull Council for Economic Opportunity is by funds of the United States except for some so-called "in kind" contributions, and that to his knowledge this is and has been the case throughout the history of the Warren-Trumbull Council for Economic Opportunity.

Further, the Affiant sayeth naught.

.....

SIDNEY I. ROBERTS.

State of Ohio
County of Mahoning } *ss:*

SWORN TO before me and subscribed in my presence this ..... day of ....., 1973.

.....

Notary Public.

[Attachments omitted because of bulk]

Supreme Court of the United States
No. 75-328

UNITED STATES, PETITIONER
v.
JOSEPH V. ORLEANS, ET AL.

Order Allowing Certiorari

Filed October 20, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE: 1975